

EX PARTE OR LATE FILED

® Bell Atlantic

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Washington, DC 20005
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Patricia E. Koch
Assistant Vice President
Government Relations - FCC

DOCKET FILE COPY ORIGINAL

RECEIVED

JUN - 5 1997

June 5, 1997

Federal Communications Commission
Office of Secretary

EX PARTE

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 96-98

Dear Mr. Caton:

Please enter the attached correspondence and attachments thereto, which have been filed with the Secretary's Office in CC Docket 96-98, as part of the record for the OSS Forum on Wednesday, May 28.

The attached letter from Bell Atlantic to the Department of Justice further clarifies the record regarding certain representations made by LCI International regarding Bell Atlantic's timely response to LCI's inquiries

Sincerely,



Attachment

cc: R. Welch

No. of Copies rec'd 012
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June 5, 1997

Federal Communications Commission
Office of Secretary

EX PARTE

Mr. Richard Welch
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W. - Room 544
Washington, D.C. 20554

Re: CC Docket No. 96-98

Dear Mr. Welch:

Please enter the attached correspondence and attachments thereto, which have been filed with the Secretary's Office in CC Docket 96-98, as part of the record for the OSS Forum on Wednesday, May 28.

The attached letter from Bell Atlantic to the Department of Justice further clarifies the record regarding certain representations made by LCI International regarding Bell Atlantic's timely response to LCI's inquiries

Sincerely,



Attachment

cc: W. Caton

Bell Atlantic Network Services, Inc.
1320 North Court House Road
Arlington, Virginia 22201
(703) 974-2944
(703) 974-0259 - FAX

Michael E. Glover
Assistant General Counsel

June 4, 1997

By Facsimile

Scott B. Murray
Telecommunications Task Force
Antitrust Division
U.S. Department of Justice
Judiciary Center Building
555 4th Street, N.W.
Washington, D.C. 20001


Dear Scott:

The attachments, which include a pair of letters to LCI and the relevant portion of our proposed agreement, are provided as a follow-up to our discussion from yesterday.

As you will see, section 34.4 of the proposed agreement (which appears on page 43) expressly allows LCI to submit performance measurement reports to regulatory agencies or to the courts. All we have asked is that they be submitted subject to appropriate confidentiality protections.

I trust this will put your concerns to rest, but feel free to give me a call if want to discuss further.

Sincerely,



Michael E. Glover

Attachments

AGREEMENT

PREFACE

THIS AGREEMENT is made by and between LCI International Telecom Corp. ("LCI"), a Delaware corporation, with offices at 8180 Greensboro Drive, Suite 800, McLean, Virginia, 22102, and Bell Atlantic--Maryland, Inc. ("Bell Atlantic"), a Maryland corporation, with offices at One East Pratt, Street, Baltimore, Maryland, 21202.

WHEREAS, pursuant to Section 251(c)(4) of the Communications Act of 1934, 47 U.S.C. § 251(c)(4), LCI wishes to purchase Bell Atlantic Retail Telecommunications Services from Bell Atlantic for resale by LCI as a Telecommunications Carrier providing Telecommunications Services in the State of Maryland; and

WHEREAS, Bell Atlantic is willing to provide such Bell Atlantic Retail Telecommunications Services in accordance with this Agreement.

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement, LCI and Bell Atlantic, each on behalf of itself and its respective successors and assigns, agree as follows:

1. DEFINITIONS

1.1 As used in the Principal Document, the terms listed below shall have the meanings stated below:

1.1.1 "Act" means the Communications Act of 1934, 47 U.S.C. § 151, et seq., as amended from time-to-time.

1.1.2 "Affiliates", as used in connection with a Party, means any corporations, partnerships or other persons who control, are controlled by, or are under common control with, the Party.

1.1.3 "Agent" means agent or servant.

1.1.4 "Applicable Law" means all applicable laws and government regulations and orders.

1.1.5 "Bell Atlantic Other Service" means any service listed in Exhibit I.

1.1.6 "Bell Atlantic Retail Telecommunications Service" means any Telecommunications Service that Bell Atlantic

marketing-literature for or otherwise market Bell Atlantic Telecommunications Services to the LCI User during a premise visit on behalf of LCI. Notwithstanding the foregoing, nothing in this Section 10.3 shall prevent a Bell Atlantic technician (or a Bell Atlantic contractor technician) from providing an LCI User, if the LCI User inquires about a Bell Atlantic service, a telephone number for Bell Atlantic's customer service or sales department.

11.4 Without in any way limiting Section 11.1, the Parties agree that notwithstanding any other provision of this Agreement, Bell Atlantic shall have no obligation to unbrand or rebrand Bell Atlantic's service technicians or vehicles, Bell Atlantic facilities or equipment, or Bell Atlantic provided customer premises equipment.

12. CHOICE OF LAW

The construction, interpretation and performance of this Agreement shall be governed by the laws of the United States of America and the laws of Jurisdiction (without regard to Jurisdiction's conflicts of laws rules). All disputes relating to this Agreement shall be resolved through the application of such laws.

13. COMPLIANCE WITH APPLICABLE LAW

13.1 Each Party shall in its performance of this Agreement comply with Applicable Law, including, but not limited to, all applicable regulations and orders of the Commission and the Federal Communications Commission.

13.2 LCI shall in providing Bell Atlantic Retail Telecommunications Services to LCI Users comply with Applicable Law, including, but not limited to, all applicable regulations and orders of the Commission and the Federal Communications Commission.

14. CONFIDENTIAL INFORMATION

14.1 For the purposes of this Section 14, "Confidential Information" means the following information disclosed by one Party ("Discloser") to the other Party ("Recipient") in connection with this Agreement:

- (a) Books, records, documents and other information disclosed in an audit pursuant to Section 9 or Section 17.5.

(b) Customer Information related to an LCI User which is disclosed by LCI to Bell Atlantic (except to the extent that (i) the Customer Information is subject to publication in a directory, (ii) the Customer Information is subject to use and/or disclosure through an Operator Service or other Telecommunications Service, or in the course of furnishing Telecommunications Services, or (iii) the LCI User to whom the Customer Information is related, in the manner required by Applicable Law, has given Bell Atlantic permission to use and/or disclose the Customer Information);

(c) Customer Information related to a Bell Atlantic Customer which is disclosed by Bell Atlantic to LCI (except to the extent that the Customer to whom the Customer Information is related, in the manner required by Applicable Law, has given LCI permission to use and/or disclose the Customer Information);

(d) Information related to specific Bell Atlantic facilities and equipment (including, but not limited to, cable-and-pair information) which is disclosed by Bell Atlantic to LCI; and

(e) Any other information which is identified by the Discloser as Confidential Information in accordance with Section 14.2.

14.2 All information which is to be treated as Confidential Information under Section 14.1(e) shall:

(a) if in written, graphic, electromagnetic, or other tangible form, be marked as "Confidential" or "Proprietary"; and

(b) if oral, (i) be identified by the Discloser at the time of disclosure to be "Confidential" or "Proprietary", and (ii) be set forth in a written summary which identifies the information as "Confidential" or "Proprietary" and is delivered by the Discloser to the Recipient within ten (10) days after the oral disclosure.

Each Party shall have the right to correct an inadvertent failure to identify information as Confidential Information pursuant to Section 14.1(e) by giving written notification within thirty (30) days after the information is disclosed.

The Recipient shall, from that time forward, treat such information as Confidential Information.

Notwithstanding any other provision of this Agreement, a Party shall have the right to refuse to accept receipt of information which the other Party has identified as Confidential Information pursuant to Section 14.1(e).

14.3 In addition to any requirements imposed by law, including, but not limited to, 47 U.S.C. § 222, for a period of five years from the receipt of Confidential Information from the Discloser, except as otherwise specified in this Agreement, the Recipient agrees:

(a) to use the Confidential Information only for the purpose of performing under this Agreement;

(b) using the same degree of care that it uses with similar confidential information of its own, to hold the Confidential Information in confidence and to restrict disclosure of the Confidential Information to the Recipient's Affiliates, and the directors, officers and employees of the Recipient and the Recipient's Affiliates, having a need to know the Confidential Information for the purpose of performing under this Agreement.

14.4 If the Recipient wishes to disclose the Discloser's Confidential Information to a third party Agent or contractor, such disclosure must be mutually agreed to in writing by the Parties to this Agreement, and the Agent or contractor must have executed a written agreement of non-disclosure and non-use comparable in scope to the terms of this Section 14.

14.5 The Recipient may make copies of Confidential Information only as reasonably necessary to perform its obligations under this Agreement. All such copies shall bear the same copyright and proprietary rights notices as are contained on the original.

14.6 The Recipient shall return or destroy all Confidential Information received from the Discloser, including any copies made by the Recipient, within thirty (30) days after a written request is delivered to the Recipient, except for (a) Confidential Information that the Recipient reasonably requires to perform its obligations under this Agreement, and (b) Customer Information related to an LCI User that is to be treated as Confidential Information by Bell Atlantic pursuant to Section 14.1(b). If the Recipient loses or

makes an unauthorized disclosure of the Discloser's Confidential Information, it shall notify the Discloser immediately and use reasonable efforts to retrieve the lost or improperly disclosed information.

14.7 The requirements of this Section 14 shall not apply to Confidential Information:

(a) which was in the possession of the Recipient free of restriction prior to its receipt from the Discloser;

(b) after it becomes publicly known or available through no breach of this Agreement by the Recipient, the Recipient's Affiliates, or the directors, officers, employees, Agents, or contractors, of the Recipient or the Recipient's Affiliates;

(c) after it is rightfully acquired by the Recipient free of restrictions on its disclosure;

(d) after it is independently developed by the Recipient; or

(e) to the extent the disclosure is required by Applicable Law, a court, or governmental agency; provided, the Discloser has been notified of the required disclosure promptly after the Recipient becomes aware of the required disclosure, the Recipient undertakes reasonable lawful measures to avoid disclosing the Confidential Information until the Discloser has had reasonable time to seek a protective order, and the Recipient complies with any protective order that covers the Confidential Information to be disclosed.

14.8 Each Party's obligations to safeguard Confidential Information disclosed prior to expiration, cancellation or termination of this Agreement shall survive such expiration, cancellation or termination.

14.9 Confidential Information shall remain the property of the Discloser, and the Discloser shall retain all of the Discloser's right, title and interest in any Confidential Information disclosed by the Discloser to the Recipient. Except as otherwise expressly provided elsewhere in this Agreement, no license is granted by this Agreement with respect to any Confidential Information (including, but not limited to, under any patent, trademark, or copyright), nor is any such license to be implied, solely by virtue of the disclosure of any Confidential Information.

14.10 Each Party agrees that the Discloser would be irreparably injured by a breach of this Section 14 by the Recipient, the Recipient's Affiliates, or the directors, officers, employees, Agents or contractors of the Recipient or the Recipient's Affiliates, and that the Discloser shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Section 14. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 14, but shall be in addition to any other remedies available at law or in equity.

14.11 The provisions of this Section 14 shall be in addition to and not in derogation of any provisions of Applicable Law, including, but not limited to, 47 U.S.C. § 222, and are not intended to constitute a waiver by a Party of any right with regard to protection of the confidentiality of information of the Party or its customers provided by Applicable Law. In the event of a conflict between a provision of this Section 14 and a provision of Applicable Law, the provision of Applicable Law shall prevail.

14.12 Bell Atlantic's use and disclosure of Customer Information related to an LCI User which is generated by Bell Atlantic in the performance of this Agreement shall be subject to the restrictions provided by Applicable Law (including, but not limited to, Section 222 of the Act, 47 U.S.C. § 222).

15. CONTINGENCIES

Neither Party shall be liable for any delay or failure in performance by it which results from strikes, labor slowdowns, or other labor disputes, fires, explosions, floods, earthquakes, volcanic action, delays in obtaining or inability to obtain necessary services, facilities, equipment, parts or repairs thereof, power failures, embargoes, boycotts, unusually severe weather conditions, revolution, riots or other civil disturbances, war or acts of the public enemy, acts of God, or causes beyond the Party's reasonable control. In providing Bell Atlantic Retail Telecommunications Services that are affected by a contingency described in this Section 15, to the extent required by Applicable Law, Bell Atlantic shall act in a manner that, as between LCI Users using such Bell Atlantic Retail Telecommunications Services and Bell Atlantic's own

written agreement with Bell Atlantic for the billing and collection of charges for such calls.

33.5 Nothing contained within this Agreement shall obligate Bell Atlantic to provide any service or product which is not a Bell Atlantic Service (including, but not limited to, the services listed in Sections 30.2, 30.3 and 30.4, above) to LCI.

33.6 Nothing contained within this Agreement shall obligate Bell Atlantic to provide a Bell Atlantic Service or any other service or product to an LCI User. Without in any way limiting the foregoing, except as otherwise required by Applicable Law, Bell Atlantic reserves the right to terminate provision of services and products (including, but not limited to, Telecommunications Services and the services listed in Sections 30.2 and 30.3, above) to any person who ceases to purchase Bell Atlantic Retail Telecommunications Service dial tone line service from Bell Atlantic.

33.7 Nothing contained in this Section 33 shall in any way exclude or limit LCI's obligations and liabilities under Section 31, including, but not limited to LCI's obligations and liabilities to pay charges for services and products as required by Section 31.

34. SERVICE QUALITY

34.1 Bell Atlantic Services provided by Bell Atlantic to LCI under this Agreement shall comply with the quality requirements for such Bell Atlantic Services specified by Applicable Law.

34.2 To the extent required by Applicable Law (including, but not limited to, any applicable provisions of 47 CFR § 51.603) and technically feasible, Bell Atlantic shall provide a Bell Atlantic Retail Telecommunications Service to LCI such that the Bell Atlantic Retail Telecommunications Service is Equal in quality, and provided within the Same provisioning time intervals, that Bell Atlantic provides the Bell Atlantic Retail Telecommunications Service to others, including end users.

As used in this Section 34.2, "Equal" and "Same" mean that there is no statistically significant difference in quality or timeliness of provision.

34.3 To the extent required by Applicable Law (including, but not limited to, any applicable provisions of 47 CFR §§

51.311 and 51.313) and technically feasible, Bell Atlantic shall provide a Bell Atlantic OSS Service to LCI such that:

(a) the quality of the Bell Atlantic OSS Service, as well as the quality of the access to the Bell Atlantic OSS Service, will be the Same as that which Bell Atlantic provides to other Telecommunications Carriers requesting access to the Bell Atlantic OSS Service; and

(b) the quality of the Bell Atlantic OSS Service, as well as the quality of the access to the Bell Atlantic OSS Service, will be Equal in quality to that which Bell Atlantic provides to itself.

As used in this Section 34.3, "Equal" and "Same" mean that there is no statistically significant difference in quality.

34.4 Bell Atlantic shall provide to LCI the performance measurement reports listed in Exhibit III. LCI agrees that the information included in these reports shall be treated by LCI as Confidential Information of Bell Atlantic under Section 14; provided that, such information may be reported by LCI to the Commission, the Federal Communications Commission, or courts of competent jurisdiction, under cover of a protective order agreed upon by LCI and Bell Atlantic.

35. SURVIVAL

Any liabilities or obligations of a Party for acts or omissions of the Party prior to the termination, cancellation or expiration of this Agreement, any liabilities or obligations of a Party under any provision of this Agreement regarding indemnification or defense, Customer Information, confidential information, or limitation or exclusion of liability, and any liabilities or obligations of a Party under any provision of this Agreement which by its terms is contemplated to survive (or be performed after) termination, cancellation or expiration of this Agreement, shall survive termination, cancellation or expiration of this Agreement.

36. TARIFF AND SERVICE CHANGE NOTICES

36.1 Bell Atlantic will give LCI notice of:

(a) Any material changes in the terms and conditions (including prices) under which Bell Atlantic offers a Bell Atlantic Retail Telecommunications Service;